

REMARKS

Claims 1–17 and 19–24 are pending in the present application.

Claims 1–3, 5, 16–17, 19 and 24 were amended herein.

Reconsideration of the claims is respectfully requested.

35 U.S.C. § 102 (Anticipation)

Claims 21–23 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,604,789 to *Lerman*. This rejection is respectfully traversed.

A claim is anticipated only if each and every element is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. MPEP § 2131 at p. 2100-76 (8th ed. rev. 5 August 2006).

Independent claim 21 recites that the fixed-site, fixed wireless access communication system base station communicates wirelessly with a plurality of fixed-site, fixed wireless access communication system subscriber stations. Such a feature is not found in the cited reference.

Therefore, the rejection of claims 21–23 under 35 U.S.C. § 103 has been overcome.

35 U.S.C. § 103 (Obviousness)

Claims 1–3, 5–10, 16–17 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over European Published Patent Application 0 609 638 A1 (“EP ‘638”) in view of U.S. Patent No. 5,673,307 to *Holland et al.* Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over EP ‘638 in view of *Holland et al.* and further in view of U.S. Patent No. 5,115,463

to *Moldavsky et al* and U.S. Patent No. 5,416,831 to *Chewning II et al*. Claims 11–15 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over EP ‘638 in view of *Holland et al* and further in view of U.S. Patent No. 5,901,352 to *St. Pierre et al*. Claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,604,789 to *Lerman* in view of *Holland et al*. These rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-125 (8th ed. rev. 5 August 2006). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.*

To establish a *prima facie* case of obviousness, three basic criteria must be met: First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *Id.*

Independent claims 1, 5, 16 and 19 each recite that the fixed-site base station and the first and second fixed-site subscriber stations communicate wirelessly. Such a feature is not found in the cited references.

Therefore, the rejection of claims 1–20 and 24 under 35 U.S.C. § 103 has been overcome.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *dvenglarik@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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